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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FEB 28 2003

FILE: [redacted] Office: Chicago Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 309 of the Immigration and Nationality Act, 8 U.S.C. § 1409

IN BEHALF OF APPLICANT: [redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Mexico on August 21, 1981. The applicant's father is not listed on her birth certificate. The applicant alleges that her father is [redacted] who was born in the United States in March 1955 and died in July 1999. The applicant's mother, [redacted] was born in Mexico in January 1958 and never had a claim to U.S. citizenship. The applicant's parents never married each other. The applicant's mother married [redacted] in 1992, and the applicant and her mother were lawfully admitted for permanent residence in January 1993.

The district director noted that the applicant claimed U.S. citizenship through her father under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401. The district director determined the applicant had failed to meet the requirements of section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1), regarding the definition of the term "child." The district director also reviewed the application under section 309 of the Act, 8 U.S.C. § 1409. The district director determined that the applicant had failed to meet those requirements and denied the application accordingly.

On appeal, counsel states that the applicant meets the requirements of section 101(c)(1) of the Act as she was legitimated. Counsel asserts that [redacted] and the applicant's mother lived together as man and wife in Texas from 1979 until 1992, and the State of Texas recognizes common law marriages. *See Matter of Garcia*, 16 I&N Dec. 623 (BIA 1978). Counsel, states, as such, the applicant was a legitimate offspring of that marriage.

In *Matter of Garcia*, the birth certificates of the U.S. citizen's five children listed the name of the purported common-law husband as father. In the present matter the purported common-law husband is not listed as the father.

The record contains a statement from the applicant's mother in which she asserts that she met [redacted] in 1979 and they eventually lived together in Chicago in 1979. She and [redacted] decided to move to Texas for a while and they lived in Fort Worth. The applicant's mother made an emergency trip to Mexico when she was eight months pregnant, presumably in July 1981, and the applicant was born there in August 1981. After the applicant and her mother returned to Texas for one month, the three of them returned to Chicago (presumably in September or October 1981). The applicant's sister, [redacted], was born in Chicago in 1983. The applicant's mother states that she and [redacted] lived together from 1979 to 1992, one year of that time being in Texas. The applicant's grandmother states that the applicant's mother and [redacted] lived together from 1979 until 1991.

Section 101(c) of the Act defines the term "child" as used in title III to mean an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere...if such legitimation...takes place before the child reaches the age of sixteen years, and the child is in the legal custody of the legitimating parent at the time of such legitimation....

Section 301(g) of the Act in effect prior to November 14, 1986, provides, in pertinent part, that a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than 10 years, at least 5 of which were after attaining the age 14 years, shall be nationals and citizens of the United States at birth. [redacted] satisfied the physical presence requirements.

The question to be resolved is whether [redacted] and the applicant's mother were living in a common-law marriage in Texas when they allegedly lived in Texas for a period of less than two years and in Illinois during the rest of their relationship.

In *Matter of Garica*, the Board of Immigration Appeals (the Board) listed the requirements under the Texas Family Code, Section 1.91(b), to establish a common-law marriage. They include: (1) an agreement by the parties to be married, (2) living together in Texas after the agreement is made, and (3) representation to others by the parties that they are married.

The Board also held in *Matter of Alvarez-Quintana*, 14 I&N Dec. 255 (BIA 1973), that for recognition in Texas of a common-law marriage, the parties to which are nondomiciliaries of the State, the parties must enter into a new agreement in the State to consider themselves as man and wife. A temporary sojourn in Texas by the nondomiciliary parties to a common-law marriage does not result in the recognition in that State of the common-law marriage, where such a visit was without the intention of acquiring residence in Texas.

The only evidence that [redacted] and the applicant's mother ever resided in Texas is contained in three affidavits, one from the applicant's grandmother who has been residing in Chicago since at least 1955, one from the applicant's mother, and one from [redacted] cousin who states that she was a teenager when [redacted] and the applicant's mother lived in Texas for a couple of years. No dates are mentioned in that statement. All other documentation, including school records, are from the Chicago area. None of the affidavits are corroborated by supporting evidence that [redacted] and the applicant's mother were actually in Texas or, if so, that they intended to acquire residence in Texas.

Further, a common-law marriage is terminated by a divorce. The applicant's mother married [redacted] and became the beneficiary of an immigrant visa petition filed by him. The applicant indicated on her immigrant visa application that her father was unknown. The mother's immigrant visa file is not present for review to see if her alleged common law marriage had been terminated as referenced in *Matter of Garcia, supra*. The applicant has failed to establish that she acquired U.S, citizenship at birth as the legitimate child of a U.S. citizen.

Section 309(a) of the Act was amended by Pub. L. 99-653 and was effective as of the date of enactment, November 14, 1986. The old section 309(a) shall apply to any individual who has attained 18 years of age as of the date of the enactment of this Act. The applicant was 5 years old in November 1986, therefore, the present section 309 of the Act applies.

Section 309 of the Act provides, in part, that:

> (a) The provisions of paragraphs (c), (d), (e), and (g) of section 301, and paragraph (2) of section 308, shall apply as of the date of birth to a person born out of wedlock if-
>
> > (1) a blood relationship between the person and the father is established by clear and convincing evidence,
> >
> > (2) the father had the nationality of the United States at the time of the person's birth,
> >
> > (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
> >
> > (4) while the person is under the age of 18 years-
> >
> > > (A) the person is legitimated under the law of the person's residence or domicile,
> > >
> > > (B) the father acknowledges paternity of the person in writing under oath, or
> > >
> > > (C) the paternity of the person is established by adjudication of a competent court.

Section 13.21 of the Texas Family Code provides in part that:

> (a) If a statement of paternity has been executed by the father of an illegitimate child, the father...may file a petition for a decree designating the father as a parent of the child. The statement of paternity must be attached to the petition.
>
> (b) The court shall enter a decree designating the child as the legitimate child of its father and the father as a parent of the child if the court finds that:
>
> > (1) the parent-child relationship between the child and its original mother has not been terminated be a decree of a court;
> >
> > (2) the statement of paternity was executed as provided in this chapter, and the facts stated therein are true; and
> >
> > (3) the mother or the managing conservator, if any, has consented to the decree.

The record fails to contain a court decree resulting from an action taken by the applicant's father under section 13.21 of the Texas Family Code to establish the applicant was legitimated as alleged.

Pursuant to 8 C.F.R. § 341.2(c), the burden of proof shall be upon the claimant, or his parent or guardian if one is acting in his behalf, to establish the claimed citizenship by a preponderance of the evidence. The applicant in this matter has not met that burden. Accordingly, the appeal will be dismissed.

Should this matter appear before the AAO again, it must be accompanied by the Service file of the applicant's mother, [redacted]

ORDER: The appeal is dismissed.